

REMARKS

The nonfinal Examiner's Action mailed 08/24/94, having a shortened statutory period for response that expired 11/24/94, and an extended statutory period for response set to expire 01/24/95, and all references cited therein have been carefully studied by Applicants. The amendments appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

The drawings were objected to because the stylet recited in claim 2 was not illustrated. The attention of the Office is therefore respectfully directed to Figs. 19 and 20; there stylet 11 is depicted. Its function is explained in the last paragraph of page 19 of the specification.

Claim 2 was rejected under 35 U.S.C. 102(b) as being anticipated by Lazarus. Noting that the effective date of the Lazarus reference is October 30, 1990, less than one year prior to the filing date of the parent application of this application, Applicants submit herewith a Rule 131 Declaration that removes Lazarus as a reference against claim 2. Withdrawal of the rejection of claim 2 based on Lazarus and allowance of said claim is solicited.

Claims 3 and 4 were rejected under 35 U.S.C. 102(e) as being anticipated by Baumgartner; reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

Tube 12 of Baumgartner is never used alone; as depicted in Fig. 1, the device of Fig. 3 must be used therewith. Thus, it would be unfair to Applicants to contend that Baumgartner teaches an open-ended hollow tube.

Claim 3, as initially drafted, was misdescriptive. It has been thoroughly amended so that it now recites the apparatus depicted in Applicants' Fig. 2. No new matter is thereby inserted because the structure of said apparatus is clear from Fig. 2. Tube 32 is obviously received within the narrow diameter bore formed in the leading end of base member 38, and port 44 is obviously in open fluid communication with said tube 32.

To even more accurately describe the apparatus of Applicants' Fig. 2, the subject matter of claim 4 has been merged with the subject matter of claim 3, and claim 4 has been cancelled. Thus, claim 3, as once amended, clearly defines over the Baumgartner structure because said structure includes no recess formed in the trailing end of the base member as claimed in said claim 3 as once amended. Note further that shaft 22 of Baumgartner is solid and that its interior is therefore not in open fluid communication with the bore formed in port 17 as it would be if shaft 22 were the counterpart of Applicants' tube 32.

For these reasons, and in fairness to Applicants, the contention that Baumgartner would have suggested Applicants' claimed structure to one of ordinary skill in the art at the time the present invention was made should be withdrawn.

Applicants are entitled to the quid pro quo promised to those who advance the useful arts in new and nonobvious ways.

Applicants gratefully acknowledge the allowance of claims 5 and 6.

Having carefully reviewed the art cited and not relied upon, Applicants agree that said art is merely cumulative at best and is not more pertinent to the claimed invention than the art cited and relied upon.

CONCLUSION

Even though the initial claims in this important patent application were drawn to a new, useful and nonobvious invention, they have now been amended to increase their specificity of language.

Thus, no estoppel has been created by these amendments. See Mannesmann Demag Corp. v. Engineered Metal Products Co., Inc., 230 USPQ 45 (Fed. Cir. 1986) ("In cases where a patentee's amendments were not required in response to an examiner's rejection, or critical to the allowance of the claims, no estoppel has been found,") citing Great Northern Corp. v. Davis Core & Pad Co., 782 F.2d 159, 228 USPQ 356 (Fed. Cir. 1986) and Datascope Corp. v. SMEC, Inc., 776 F.2d 320, 227 USPQ 838 (Fed. Cir. 1985). Also, see Insta-Foam Products Inc. v. Universal Foam Systems, Inc. 15 USPQ 2d 1295 (Fed. Cir. 1990).

Entry of a Notice of Allowance is requested.

If the Office is not fully persuaded as to the merits of Applicants' position, or if an Examiner's Amendment would

place the pending claims in condition for allowance, a telephone call to the undersigned at (813) 538-3800 is solicited.

Very respectfully,

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